

Remarks

Claims 1-26 are pending in this application. Claim 24 has been cancelled, and claims 27-29 are added herein. Applicants respectfully requests reconsideration of this application in light of the following remarks.

Rejection of Claims 1-26 Under 35 U.S.C. § 102(b): Apps et al (US DES 378,249)

The Examiner has rejected claims 1-26 under 35 U.S.C. § 102(b) as anticipated by Apps et al (the '249 patent). Applicants respectfully traverse this rejection. Because the rejection was made without comment, it is assumed that the Examiner is asserting that the "sidewall logo" of the '249 patent anticipates Applicants' claimed "side band member." Accordingly, this reference does not anticipate claims 1, 12, and 20 which call generally for the nesting area to matingly receive "a corresponding side band member of a crate nested subjacent thereto."

To the contrary, when the "bottle case" disclosed in the '249 patent receives a subjacent bottle case, the area below the "sidewall logo" portion will not receive a corresponding "sidewall logo" portion, as claimed by Applicants. Instead, the area below the "sidewall logo" of the '249 patent will receive the members projecting upwardly from the "sidewall logo" portion. Thus claims 1, 12 and 20 are not anticipated. Further, claim 12 includes an "upper edge at the corner band portion is disposed below the plane of the upper edge at the side band portions and end band portions". However, the '249 patent includes an upper edge in the corner which is disposed above, not below, the "sidewall logo." Thus claim 12 is again not anticipated.

For these reasons, Applicants believe that these claims are patentably distinguished over this reference.

Rejection of Claims 1, 2, 4-12, 14-20, 23-26 Under 35 U.S.C. § 102(b): Apps (US 5,060,819)

The Examiner has rejected claims 1, 2, 4-12, 14-20, 23-26 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,060,819 to Apps. Applicants respectfully traverse this rejection. The '819 patent includes multiple embodiments, and it appears as though the Examiner is using certain embodiments to reject the base claim (for example, claim 1), and different embodiments to reject the dependent claims (for example, claim 4.) Applicants would

assert that this is inconsistent and improper, and the Examiner is requested to clarify the embodiments and views on which the various rejections are based.

Nonetheless, claim 1 includes a “band member defined by an upper edge and lower edge” (emphasis added), the lower edge of which is spaced above the floor member by a predetermined distance. Claim 12 includes similar language. The ‘819 patent clearly does not include these features. The ‘819 patent includes a sidewall 104 with a top and bottom surface 106,108. If the Examiner asserts that sidewall 104 anticipates Applicants’ claimed “band member”, then the bottom surface 108 of sidewall 104 is not spaced above floor 102, as required by Applicants’ claims. Thus, claims 1 and 12 are not anticipated by the ‘819 patent. Further, claim 20 includes a band member having “upper and lower edges directed downwardly” to form a corner band portion, and also includes a corner projection member extending upward from the corner band portion. None of the embodiments of the ‘819 patent appear to include such features. Accordingly, the ‘819 patent does not anticipate these claims.

Further, with regard to dependent claims, claim 6 does not appear to be anticipated as the ‘819 patent does not appear to have the pair of diagonally opposed members as defined by Applicants. Claims 8, 17 do not appear to be anticipated as the ‘819 patent does not appear to have a handle member. Claims 9, 18, 25 do not appear to be anticipated as the ‘819 patent does not appear to show a double-wall construction. Thus, the rejected claims are asserted to be patentably distinguished over the ‘819 patent.

Rejection of Claims 1,2,6-10, 12, 16-20, 23-26 Under 35 U.S.C. § 102(b): Rehrig Splash Crate

Claims 1, 2, 6-10, 12,16-20, and 23-26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by the Rehrig “Splash Crate”. Applicants respectfully traverse this rejection. Like the ‘819 patent above, the Splash Crate does not have a lower edge “spaced above” the floor member along each sidewall, as claimed in claim 1. Claim 12 includes similar language. Further, claim 20 includes a corner projection member extending upward from the corner band portion. Such features are not found in the Splash Crate. Accordingly, it is requested that this rejection be withdrawn.

New Claims

New independent claims 27-29 are being added herein and it is asserted that these claims are in a condition for allowance.

Conclusion

Applicants appreciate the Examiner's review of the application and claims. For the reasons set forth above, Applicant believes that the claims are patentably distinguished over the cited art, and believes the pending and new claims are in a condition for allowance. A Notice of such allowance is respectfully requested. The Examiner is invited to contact the undersigned if he wishes to discuss this application, or if he believes that a conference call would help advance prosecution.

A check in the amount of \$ 400 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 50-1984.

Respectfully submitted,

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By



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